

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

NOV 17 2015

Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JIMMIE RICHARD JAMES,

Defendant.

CR 15-82-BLG-SPW

OPINION and ORDER

Before the Court is Defendant Jimmie James's Motion to Produce Personnel Files of Testifying Officers. The government acknowledges that it must produce any impeachment information for testifying federal officials but disputes that it must review the personnel files of state officials. The Court agrees with the government.

The government must produce any exculpatory evidence that it possesses. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This includes any information that may affect the credibility of its witnesses. *Giglio v. United States*, 405 U.S. 150, 153 (1972). Because of this, the government must review the personnel files of testifying government agents and disclose any information "material to the preparation of a defense." *United States v. Cadet*, 727 F.2d 1453, 1468 (9th Cir. 1984) (brackets omitted) (citation omitted).

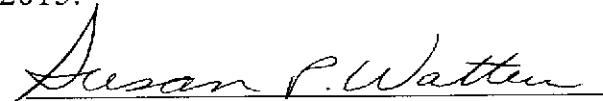
In *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), the Ninth Circuit elaborated on the procedure that the government should follow. Upon request, the government must examine the personnel files of any testifying federal officers and “disclose information favorable to the defense that meets the appropriate standard of materiality.” *Id.* at 30-31 (citing *Cadet*, 727 F.2d at 1467-68). If the government is unsure about the materiality of any information, it may submit the file to the Court for an *in camera* inspection. *Id.* at 31.

In complying with *Henthorn*, the government does not have to review the personnel files of state or local law enforcement officers. *United States v. Dominguez-Villa*, 954 F.2d 562, 565-66 (9th Cir. 1992). This is because the “prosecution is under no obligation to turn over materials not under its control.” *Id.* at 566 (quoting *United States v. Aichele*, 941 F.2d 761, 764 (9th Cir. 1991)). Thus, *Henthorn* only applies to federal officers or to information within the government’s possession or control. *United States v. Origel*, 2010 WL 1654134 at *2 (D. Ariz. April 20, 2010).

Accordingly, IT IS HEREBY ORDERED that the Motion to Produce Personnel Files of Testifying Officers (Doc. 40) is GRANTED as to testifying federal law enforcement officials and DENIED as to any other law enforcement officials. The United States Attorney’s Office and the agencies for each testifying

federal law enforcement official shall coordinate the review of the witness' personnel files in accordance with *United State v. Henthorn*.

DATED this 17th day of November, 2015.


SUSAN P. WATTERS
United States District Judge